

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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U.S. DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL

POSTAL RATE AND FEE CHANGES, 1997

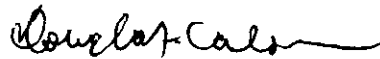
Docket No. R97-1

DOUGLAS F. CARLSON
REPLY BRIEF

April 10, 1998

I, Douglas F. Carlson, hereby submit my reply brief for Docket No. R97-1.

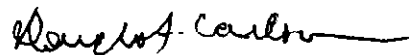
Respectfully submitted,



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

April 10, 1998
Emeryville, California

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I. STAMPED CARDS

A. THE COMMISSION SHOULD DISMISS THE POSTAL SERVICE'S UNFOUNDED CRITICISMS OF MY PROPOSED RATE CATEGORY FOR STAMPED CARDS.

1. Cost studies are necessary only when cost data do not already exist.

The Postal Service attempts to discredit my proposed rate category for stamped cards by complaining that I have not produced a cost study. Postal Service Initial Brief at V-70-71. When a party proposes a new classification or rate category such as Prepaid Reply Mail for which cost data do not already exist, a cost study may be necessary. In contrast, the Postal Service's own CRA data reveal that "CRA unit mail processing costs for postal cards have historically been lower than those of private post cards[.]" Tr. 19E/9626. Therefore, since the data establishing the cost differential *already exist*, a cost study is totally unnecessary.

2. FY 1996 data are consistent with historical data.

The Postal Service suggests that FY 1996 data may not accurately reflect attributable costs for stamped cards because the CRA costs "were not based on a full year of data." Postal Service Initial Brief at V-72. In FY 1995, the cost differential between stamped cards and private post cards also was large — 8.7 cents. Docket No. MC96-3 USPS-T-5C at 10. Moreover, witness Alexandrovich testified that the "CRA unit mail processing costs for postal cards have *historically* been lower than those of private post cards" [emphasis added]. Tr. 19E/9626. Thus, even if the FY 1996 data are inaccurate, other evidence confirms the cost differential.

3. The Postal Service acknowledges that stamped cards are more compatible with automation than private post cards.

Citing Tr. 3/778-79, the Postal Service claims that my rate category is not justified because witness Miller "could not distinguish between stamped cards and private cards in terms of their automation compatibility." Postal Service Initial Brief at V-72. However, at Tr. 3/780 witness Miller admits that he has conducted no studies comparing the automation compatibility of stamped cards and private post cards; thus, he has not, as the Postal Service implies, studied this issue and found no cost differential. He has simply not studied the issue.

The greater automation compatibility of stamped cards compared to private post cards is obvious, as private post cards suffer from problems with their color, surface texture, and background reflectance. See Tr. 24/12798-99. Anyone who receives colorful advertising post cards and glossy picture post cards can see the difficulties in applying bar codes to this mail. In fact, when asked to explain the differential in processing costs between stamped cards and private post cards, witness Patelunas suggested that "postal cards are less costly to process

because they are more compatible with mechanization and automation.” Tr. 19F/10090. The greater automation compatibility of stamped cards stands unrebutted in the record and justifies a reduced rate for stamped cards.

4. The Postal Service has not established that its own cost data are unreliable.

To attempt to defeat my proposal and support its unfair 23-cent combined rate and fee for stamped cards, the Postal Service asserts that its cost data for stamped cards are not reliable. However, witness Alexandrovich confirmed that “no studies or other analyses have concluded that the reliability of the cost data for postal cards . . . has been affected in any significant way by the misidentification of stamped cards and other cards by IOCS data collectors.” Tr. 19E/9621. Moreover, for all we know, coding errors could *overstate* stamped-card costs, or the errors could cancel out. Tr. 19E/9622. The Postal Service also has never tried to correct any data-collection problems. Tr. 13/7004–05. In fact, the “possibility” of “misidentification of stamped cards and private post cards was based more on deductive reasoning, given the multiple choices facing the data collector, than on any studies or analyses.” Tr. 13/7004–05. In reality, the likelihood of misidentification by data collectors seems low because stamped cards are distinctive. For example, witness Alexandrovich, who has not even been trained as a data collector, had no difficulty correctly classifying the cards that I presented at Tr. 19E/9624–25. Therefore, absent a single study or analysis, the Commission must reject the Postal Service’s assertion that its own cost data are not correct.

5. Costs for stamped cards and private post cards are sufficiently uniform to justify separate rate categories.

Noting that some private post cards may incur costs as low as stamped cards, the Postal Service claims that cost characteristics are insufficiently uniform “to justify . . . a separate subclass.” Postal Service Initial Brief at V-71. First, the Postal Service errs in claiming that I proposed a separate subclass; instead, I am proposing a new rate category within the Stamped Cards and Post Cards subclass. Tr. 24/12803. Second, mail pieces in a rate category do not necessarily need to have perfectly uniform cost characteristics. As I explained in my initial brief at 1–2, the cost characteristics for my proposed rate category for stamped cards would be more consistent than the costs for existing categories such as one-ounce First-Class letters, since letters vary widely in their cost characteristics, yet all pay 32 cents.

The Postal Service also claims that, at Tr. 24/12851, I confirmed that “the cards within a stamped card classification would have widely varying characteristics.” Postal Service Initial Brief at V-72. I confirmed no such thing. Indeed, the only variation in cost characteristics for stamped cards arises from handwritten versus typewritten addresses. In contrast, private post cards vary widely in shape, thickness, flexibility, surface texture, color, and background

reflectance. Compared to the cost characteristics of other rate categories such as one-ounce letters and private post cards, stamped cards have uniform cost characteristics.

6. My testimony addresses the Postal Service's objection to my methodology for calculating the rate for stamped cards.

The Postal Service complains that my methodology for calculating the rate for stamped cards requires the Commission to apply separate markups to the mail-processing costs and manufacturing costs and then combine those amounts to arrive at a single rate. Postal Service Initial Brief at VI-47. In my testimony, I offered an alternative method, proposing an 18-cent rate for stamped cards and a two-cent stamped-card fee. Tr. 24/12802. This method parallels the Postal Service's own proposal for a two-cent fee for stamped cards. I believe, however, that selling stamped cards for the rate that is printed on the cards would avoid consumer confusion, so the methodology that I selected is preferable — but either is acceptable.

B. THE POSTAL SERVICE'S PROPOSED 23-CENT RATE AND FEE FOR STAMPED CARDS IS UNSUPPORTED BY SUBSTANTIAL RECORD EVIDENCE.

If the Postal Service is concerned about the absence of a cost study for my proposal, this same concern should apply to the Postal Service's own proposal — except with much greater force. The Postal Service's own cost data reveal that stamped cards incur costs 11.1 cents lower than private post cards do. However, the Postal Service now wants to charge customers 23 cents for stamped cards but only 21 cents for private post cards. Where is the Postal Service's evidence refuting its own cost data? Where is the cost study justifying this higher fee? Despite having no studies or analyses indicating that the cost differential was not real, Tr. 19E/9621, the Postal Service stopped collecting separate data for stamped cards and private post cards. The Postal Service now proposes a *higher* rate and fee for stamped cards, directly contradicting its own cost data.

The Postal Service's proposal is unfair and inequitable. Moreover, the proposal is not in the public interest, as it represents poor pricing policy and arbitrary changes in data-collection methods. Therefore, absent evidence refuting the Postal Service's cost data, the Commission must reject the Postal Service's proposed 23-cent rate and fee for stamped cards — and this unprecedented 303-percent cost coverage — as unsupported by substantial record evidence.

II. RETURN RECEIPT

As intervenor David B. Popkin noted in his initial brief at 2, on March 16, 1998, the Postal Service published a notice in *Federal Register* announcing an amendment to DMM § D042.1.7(b). The amendment would authorize any post office to deliver return-receipt mail to

any organization that receives a "large" number of return receipts and permit that organization to sign, date, and mail back the return receipts without any supervision by the Postal Service. 63 Fed. Reg. 12,874 (1998). By failing to ensure that return receipts will have an accurate date of delivery, the Postal Service will contribute to a further decline in the value of return-receipt service. Contrary to the Postal Service's assertion, Postal Service Initial Brief at VI-40, a higher cost coverage based on value of service is not justified.

In addition, by filing this proposed amendment eight months into the case, the Postal Service violated §§ 54(a) and 54(e) of the *Rules of Practice*.

A. THE PROPOSED AMENDMENT IS FURTHER EVIDENCE THAT A HIGHER COST COVERAGE FOR RETURN RECEIPT IS NOT JUSTIFIED.

As I explained in my initial brief at 5 and my testimony at Tr. 24/12814–18, serious service problems plague return-receipt service. These problems generally result from the Postal Service's failure to act as a disinterested third party in ensuring that the correct date of delivery is placed on the return receipt, the widespread failure of delivery employees to require the recipient to complete the "print name" block, and the Postal Service's failure to mail back the return receipt to the sender within one working day after delivery.

Instead of addressing these problems, the Postal Service now proposes an amendment to DMM § D042.1.7 that will further undermine the value of the service and allow these problems to continue and, in all likelihood, proliferate. The regulation reads as follows, with the new language in *italics*:

The mailpiece may not be opened or given to the recipient before the recipient signs and legibly prints his or her name on the delivery receipt (and return receipt, if applicable) and returns the receipt(s) to the USPS employee; *or, for organizations such as the IRS, which receive large numbers of return receipts, before the recipient signs a manifest listing all the Express Mail and accountable mailpieces being delivered.* 63 Fed. Reg. 12,874 (1998)

Under this proposed amendment, once the recipient signs the delivery manifest, the recipient will take *total* control over the return receipts. The recipient will be solely responsible for completing the return receipts, and the Postal Service will conduct no oversight¹ to ensure that each customer receives correct information on his/her return receipt and that the return receipts are mailed back.

Not only is the Postal Service proposing to legitimize rogue delivery practices, it now plans to allow these practices for any organization that receives an undefined "large" number of return receipts. Apparently a postmaster would be able to invoke this new procedure any time an organization received enough return receipts to cause processing of the return receipts

¹ Any oversight short of verifying *each* return receipt would be insufficient and unacceptable given the importance of this information to postal customers.

to become simply time-consuming or inconvenient. Most customers need independent acknowledgement of the date of receipt, as the date of receipt is critical for, e.g., payment of parking and traffic citations² and filings with the Federal Communications Commission³; however, this amended regulation would *permit* postmasters to turn over citation payments to the local municipal court and allow the court to fill in the date of receipt on the return receipt.

The Postal Service's proposed amendment is honorable to the extent that it finally acknowledges the existence of certain delivery practices. However, when confronted with a problem, the Postal Service should solve the problem, not lower the standards and then announce that the problem is solved. This proposed amendment undermines the Postal Service's request for a higher cost coverage for return receipt, and it suggests that the Postal Service really does not care about providing a quality service. Instead, the Postal Service seems to be primarily interested in collecting (and increasing) a fee, and the less work that the Postal Service has to do in exchange for the fee, the better. Quality return-receipt service is not a priority. Thus, the Commission should reject a 32-percent fee increase for return receipt.

B. BY CONCEALING THE PROPOSED AMENDMENT FROM CROSS-EXAMINATION AND THEN FILING THE AMENDMENT EIGHT MONTHS INTO THE CASE, THE POSTAL SERVICE VIOLATED RULE 54.

1. The proposed amendment is another chapter in the Postal Service's campaign of deception regarding the quality of return-receipt service.

As I explained in my initial brief at 9–10, since Docket No. MC96-3 the Postal Service has been deceiving the Commission and participants about the procedures used for delivering return-receipt mail. Unfortunately, the deception continues.

In his rebuttal testimony filed on March 9, 1998, witness Plunkett finally acknowledged that procedures for delivering mail to the Internal Revenue Service are inconsistent with DMM regulations. He then testified that "the appropriate remedy would not be to require rigid adherence to the existing regulations, but to amend the regulations to reflect the exception that may obtain when receipts are delivered to IRS service centers." Tr. 32/17125. His use of the conditional suggested that amending the regulations was merely one approach to consider; it certainly did not suggest that filing of a proposed amendment was imminent. In reality, not only was a proposed amendment a possibility, it was written and filed in time to be published in *Federal Register* on the morning of March 16, 1998.

When witness Plunkett appeared for oral cross-examination on March 16, 1998, Postal Service counsel asked him, "And if you were to testify orally here today, would this be your

² Tr. 24/12837.

³ 47 C.F.R. § 1.7.

testimony?" Tr. 32/17111. Witness Plunkett replied, "Yes, it would." *Id.* However, at no time on March 16, 1998, did witness Plunkett or the Postal Service clarify the testimony to indicate that the Postal Service was formally proposing to amend this regulation — a regulation that has been a central issue concerning the Postal Service's return-receipt proposal. The Postal Service also failed to mention that, contrary to witness Plunkett's suggestion, the published amendment applied to any large organization, not just the IRS. Witness Plunkett and the Postal Service misled the Commission and me by failing to clarify the rebuttal testimony in time for cross-examination on the effects of this amendment on the value of return-receipt service.

2. By proposing an amendment to the regulation eight months into the case, the Postal Service violated Rules 54(a) and 54(e).

Rule 54(a) requires the Postal Service to file with its direct case

information . . . necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. *Rules of Practice* § 54(a).

This rule exists not only to provide parties with information but also to preserve their due-process right to cross-examine the Postal Service on every aspect of its case. In Docket No. MC96-3, the Commission noted that the "evolutionary nature" of the Postal Service's proposed "nonresident fee" for post-office boxes "impeded efforts by parties and the Commission to evaluate the merits of the nonresident fee." PRC Op. MC96-3 at 73. This time, the nature of return-receipt service has changed eight months into the case. As an individual intervenor, I must spend hundreds of dollars on postage, photocopying, and travel to participate effectively in a case. By concealing the proposed amendment to DMM § D042.1.7 from me while I was already in Washington on March 16, 1998, and preventing me from conducting cross-examination on the effect of this amendment on the value of return-receipt service, the Postal Service violated Rule 54(a) and denied me due process. The Commission should take note of the Postal Service's litigation tactics.

Rule 54(e) requires the Postal Service to describe

special service arrangements provided to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the *value* of the mail service to both the sender and the recipient [emphasis added]. *Rules of Practice* § 54(e).

Delivery procedures for return-receipt mail to the IRS and other large organizations clearly must be disclosed under Rule 54(e), as these procedures affect the value of the service to the sender. However, as I explained in my initial brief at 9–10, not only did the Postal Service fail to provide this information, it attempted to conceal it. The Commission should note in its opinion and recommended decision the Postal Service's violations of Rule 54.